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No.

IN THE
Supreme Court of the United States
OCTOBER TERM, 1984

CAPITAL CITY PRESS, INC.,
Petitioner,

v.

GILBERT BURATT,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

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36 pp

QUESTIONS PRESENTED

The Louisiana courts imposed liability for the publication of admittedly accurate summaries of certain public records because it was found that the failure to summarize another statement in the public record rendered the published summaries inaccurate and constituted sufficient evidence that the actionable inaccuracy was accomplished with actual malice. The questions presented by this petition are:

1. Is a newspaper account of public record documents susceptible to a defamation claim by a public official when both sides of a binary factual dispute are conveyed in the article?

2. Were the Louisiana appellate courts constitutionally obliged to review the trial court's finding of fact on the issue of actual malice more rigorously than they did?

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OPINIONS BELOW

The opinion of the Louisiana appellate court (App. 1a) is reported at 459 So.2d 1268 (La. Ct. App. 1984). The opinion of the trial court is appended to the Court of Appeal opinion and reported with it. The denial of *certiorari* by the Louisiana Supreme Court (App. 13a) is not yet reported.

JURISDICTION

The Louisiana Supreme Court declined to review the decision of the Court of Appeal in a decree rendered January 14, 1985. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

Congress shall make no law . . . abridging the freedom of speech, or of the press . . . . U.S. Const. Amend. 1.

STATEMENT OF THE CASE*

The events underlying this case date back to the spring of 1976 when an Ascension Parish Grand Jury initiated an investigation of alleged irregularities involving the Police Jurors of the Parish. "No charges were brought by either the Grand Jury or the District Attorney, and the Grand Jury investigation in the Parish was ended by mid-April of 1976." *Fryar* v. *Guste,* 371 So. 2d 742, 744 (La. 1979). A further investigation of these allegations was requested by a group of Ascension Parish citizens in May of 1976.

> As a result of this meeting, the Attorney General's staff once again interviewed persons in Ascension Parish. In all, fifty-two people were interviewed, some more than once . . . . These interviews were concluded in Feburary of 1977, and the following month the reports were furnished to the District Attorney in Ascension Parish. He stated that since nothing new was disclosed by this investigation he considered the matter to be closed.

Id.

Employees of Capital City Press, the publisher of, *inter alia,* the Sunday Advocate, sought and were denied access to the interview reports. The paper's right to review these

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*Petitioner, Capital City Press, Inc., is a privately-held corporation. It has no subsidiaries which are not wholly-owned. It is under common ownership with Louisiana Television Broadcasting Corporation, Baton Rouge Broadcasting Co., Inc. and Mobile Video Tapes, Inc.

records was finally determined by the Louisiana Supreme Court in the *Fryar* case. All of the investigative records save "the interviews with the 11 persons conducted prior to adjournment of the Grand Jury" were opened to public examination under the provisions of the "Public Records Act, LSA-R.S. 44:1, *et seq.*, [which] provides for public access to information concerning state government as it is conducted through its many agencies." *Fryar* v. *Gueste,* 371 So.2d at 745.

Capital City reporters Milford Fryer — the plaintiff in the case mistakenly styled *Fryar* — Roy Pritchford and Lawrence Albarado promptly took advantage of the Louisiana Supreme Court's ruling and examined the records newly opened to them. On July 8, 1979 the Sunday Advocate published four articles summarizing various aspects of the information contained in the investigative records. The article on which the present lawsuit was based was among these. It read:

> *'Gestures of Friendship' in Ascension*
> RECORDS REVEAL GIFTS TO POLICE JURY MEMBERS.
>
> Editor's Note: *The Louisiana Supreme Court recently ended a lengthy court battle by ordering the State Attorney General's Office to allow review of records of its investigation of allegations against members of the Ascension Parish Police Jury — allegations first made public in a series of articles which appeared in the Morning Advocate in 1976. This article and others on Page 16-A contain previously unreported information from the attorney general's documents.*
>
> By Milford Fryer, Advocate State Writer and Roy Pitchford, Advocate State Editor

DONALDSVILLE -- A Baton Rouge engineering firm which held contracts with the Ascension Parish Police Jury gave campaign contributions, steak dinners, LSU football tickets, Christmas gifts and free surveying work to members of the police jury.

Records obtained from the office of the Louisiana Attorney General's criminal division told of the frequent gifts by Barnard and Thomas Engineering, though K.J. Thomas, B&T vice president, said jurors did not ask for the favors and they were granted as "gestures of friendship."

The records were obtained through a lawsuit filed by the *Morning Advocate*. The attorney general's office had blocked review of the documents for more than two years and fought the newspaper's suit until the matter was finally decided by the State Supreme Court.

At least six members of the police jury which served from 1972-76 received free engineering work from Barnard and Thomas. Ten of the 11 jury members at the time received $100 campaign contributioins from the firm. Some jurors only recalled receiving $50 from the firm.

Thomas said he asked all jurors if they wanted campaign "assistance," and that the firm "subsidized" campaign printing for the police jury campaign of Alton Delaune and for Police Juror Frank Frederic when Frederic ran for state senator.

B&T also bought steak dinners at the Gonzales Country Club for the jurors and gave them Christmas gifts.

Thomas, who said he included all the police jurors in his circle of friends, said he approached

the police jurors and offered favors, rather than being approached by them.

The engineering company executive said he saw nothing illegal or unethical in his dealings with police jurors, and no juror ever approached him for illegal work.

Thomas denied that his engineering firm had provided football trips for the police jury as a body, but said he had given LSU football tickets to Frederic.

The tickets were given to Frederic, Thomas said, since the juror was "a close friend" and since Thomas "was aware of his love for football."

Part of what Thomas told attorney general's investigators was contradicted by statements form Harold Williamson, a B&T engineer in charge of streets, drainage and parish roads and state highway projects.

Williamson told investigators the firm provided football trips – tickets and meals – to LSU games.

Thomas had one of his employees, Clay Jarreau, do surveys for several jurors.

Jarreau said he had done a lot of surveying in the parish, but said he worked there "due to a shortage of surveyors in the parish."

Jarreau said he was paid $190 for work for Frederic, $165 each for work for Delaune and Gilbert Buratt and smaller amounts for work for Raymond Julien, Bud Broussard and Grady Melancon.

Williamson also said that he signed the plat for Voisin Subdivision, which was developed by

Delaune. He said he had not been approached by Delaune for assistance.

The actual subdividing and preparation of the plat was done by employees in Williamson's section, he said.

B&T served as parish engineer during the time Thomas was making the gifts and services available to the jurors, and still holds that position.

Delaune was also loaned construction equipment by road contractors and asked for other assistance which was denied.

Joe Delaune (no relation), a road foreman for LeBlanc Brothers Construction Co., said he loaned a motor patrol (road grader) to Juror Delaune for use on work in his subdivision on the condition that the police juror would use a competent operator.

The police juror also said clearing work had been done on property at the rear of his subdivision, using LeBlanc Brothers equipment which was being used for a road project.

LeBlanc Brothers officials insisted they never authorized work on Delaune's subdivision.

Delaune also tried to get Barber Brothers Construction Co. to "reshape" a road in his subdivision and to clear five or six acres. A company representative was sent to review the project and said the firm could not do that work and road work it had contracted to do.

Barber Brothers vice president Paul Barber said he could not remember if Delaune offered to pay for the work or not.

Barber also said that his firm was asked to overlay roadbeds in a subdivision in Galvez

> owned by Police Juror and Parish Manager Buratt and a partner.
>
> Buratt said he never developed any property in the area.
>
> Barber said the company turned down the request since tests showed the roadbed was "insufficient for overlay purposes." He said Buratt's unnamed partner later said he would pay whatever price was necessary since he had been turned down a number of times. He said the work was eventually performed by someone else.

Mr. Buratt took no exception to the statements in the article concerning "gestures of friendship" extended to him in the form of free surveying services and campaign contributions. The complaint that initiated this litigation focused exclusively on the final three paragraphs of the article, alleging that:

> The information supplied in the above excerpt is completely contrary to fact; petitioner has never owned any subdivision or developed any property for subdivision purposes in the Parish of Ascension; moreoever, petitioner has never been a member of any partnership which has been connected with the development of any property for subdivision purposes in the Parish of Ascension.

Petition, paragraph 4.

The trial court granted the defendant's motion to dismiss for failure to state a claim. That determination was subsequently reversed and the case remanded for trial. *Buratt* v. *Capital City Press, Inc.,* 399 So.2d 687, 689 (La. Ct. App. 1981) *cert. denied,* 416 So.2d 116 (La. 1982).

The trial resulted in a judgment for the plaintiff for

$3,000 as damages and $1,000 in attorney's fees. This determination was upheld on appeal and the Louisiana Supreme Court declined, by a vote of four to three, to review the decision of the appellate court.

The question raised here concerning the accuracy of the newspaper's report was raised at trial and not deserted on appeal, as is evident in the opinions of the trial court and the Court of Appeal. *See, e.g., Buratt* v. *Capital City Press, Inc.*, 459 So.2d at 1271-72, 1270-71. App. 8a-10a, 4a-6a. The error of the Court of Appeal in failing to adhere to the constitutionally required standard of review was raised before the Louisiana Supreme Court[1]

REASONS FOR GRANTING THE WRIT

There are two independently sufficient grounds for the Court to take this case.

The first centers on the analytic confusion that has resulted from the absence of a clear standard for defining constitutionally protected "accurate" reports of public records of the variety on which the story at issue in this case was based. This case illustrates vividly the devaluation of First Amendment protection that has flowed from that confusion and will serve well as a device for curing this constitutional harm.

The second derives from the failure of the Louisiana appellate courts to review independently the evidence concerning actual malice relied on by the trial court. The

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[1]The first of the "Issues and Questions of Law" presented to the Louisiana Supreme Court was this:

> Whether the Court of Appeal, First Circuit, made an independent examination of the whole record as required in First Amendment cases and made an examination in depth of the evidentiary basis of the trial court's decision.

reasoning of *Bose Corp.* v. *Consumers Union of U.S., Inc.*, ____ U.S. ____, 104 S.Ct. 1949 (1984) requires such review.

I. A Report of Public Record Information That Adequately Captures All Sides of Any Dispute Concerning Historical Fact Is "Accurate" and Constitutionally Secure From Claims of Defamation Liability by a Public Official Plaintiff.

The facts on which the reporters responsible for the "Gestures of Friendship" article drew were of a special sort in several dimensions. They were taken entirely from public records. But they were not, as in *Time, Incorporated* v. *Pape,* 401 U.S. 279 (1971) and *Time, Inc.* v. *Firestone,* 424 U.S. 448 (1976),[2] the conclusions of a governmental entity. Instead, they were the raw data upon which governmental decisions not reduced to formal articulation were based. They constituted the only evidence available to illuminate an investigation into charges that public officials had comported themselves with less than appropriate rectitude in their official capacities. To make generally known the raw reports of such investigations is surely a centrally important function of the press:

> [A] vast amount of what is published in the daily and periodical press purports to be descriptive of what somebody said rather than of what anybody did. Indeed, perhaps the largest share of news concerning the doings of government ap-

[2]A comparison of the *Pape* and *Firestone* cases shows the extent to which the social values of protecting privacy and reputation that properly caution reports concerning members of the public at large have a different weight where public officials are the focus of news coverage. There is much to the proposition that public knowledge of official reports of investigations of public officials – and, most especially, elected officials – are a vital ingredient to the informed function of the democratic process.

> pears in the form of accounts of reports, speeches, press conferences, and the like. The question of the "truth" of such an indirect newspaper report presents rather complicated problems.

Time, Inc. v. *Pape,* 401 U.S. 285-86. Even when the public record has got the facts wrong (or not demonstrably right), a fair report of the erroneous public record recitation serves important values and must be protected from defamation liability.

> What is newsworthy about such accusations is that they were made. We do not believe that the press may be required under the First Amendment to suppress newsworthy statements merely because it has serious doubts regarding their truth. Nor must the press take up cudgels against dubious charges in order to publish them without fear of liability for defamation. *Cf. Miami Herald Publishing Co.* v. *Tornillo,* 418 U.S. 241, 94 S.Ct. 2831, 41 L.Ed.2d 730 (1974). The public interest in being fully informed about controversies that often rage around sensitive issues demands that the press be afforded the freedom to report such charges without assuming responsibility for them.

Edwards v. *National Audubon Society, Inc.,* 556 F.2d 113, 120 (2d. Cir.) *cert. denied,* 434 U.S. 1002 (1977).[3]

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[3]The *Edwards* case involved statements that were not reflected in public records and, consequently, did not carry with them the special variety of "truth" defense associated with an accurate report of public record utterances. *See Time, Incorporated* v. *Pape,* 401 U.S. at 286. As the statements concerning Mr. Buratt were taken exclusively from public records, the "truth" represented by an accurate summary of them may not be neglected by state defamation law. *See, e.g., Garrison* v. *Louisiana,* 379 U.S. 64, 77-78 (1964).

In the variety of investigation reported in the story at issue here it is almost certain that different perceptions of "fact" will be contained in the recitations of various participants in the events under scrutiny. Paul Barber reported to the investigator that (to his understanding) Mr. Buratt was a partner in the subdivision development on whose roads Barber was being asked to work. This belief was accurately conveyed – in terms both of substance and source – in the news article. Mr. Barber was wrong as to this fact. In his interviews with the investigator, Mr. Buratt denied having any interest in the development. This too was accurately conveyed in the published article.

No portrayal of Mr. Buratt's ownership interest in the subdivision can have more than two sides. He either had one or didn't. Both sides were presented to the investigator and both were reflected in the article.

Yet the Louisiana courts found the article to be inaccurate because it failed to refer to a third investigative interview that – necessarily – supported one of the two factual positions that had found voice in the story:

> In the article Barber was summarized as referring to ". . . a subdivision in Galvez owned by Police Juror and Parish Manager Buratt and a partner" and "Buratt's unnamed partner . . .". The unnamed partner was Earl Stafford. His statement was also there with the documents of the Attorney General that had been declared public, and was in fact examined by the same reporters who summarized Barber's statement. It completely refuted ownership of the subdivision by Buratt. Yet it was not summarized or referred to by the reporters.

Buratt v. *Capital City Press*, 459 So.2d at 1270. App. 5a.

The article did report Mr. Buratt's denial of ownership. That version of the facts – equally with the Stafford statement – "completely refuted ownership." The insistance on a summary of the Stafford statement's endorsement of Mr. Buratt's version of the facts is appropriate only if very close fidelity to the underlying source – something not far short of facsimile reproduction of the investigative reports – is required to establish the "truth" and consequent freedom from defamation liability of the article. The level of intrusion into the day-to-day business of the newspaper necessitated by the standards of accuracy adopted by the Louisiana courts burdens First Amendment values:

> A newspaper is more than a passive receptacle or conduit for news, comment, and advertising. The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public officials – whether fair or unfair – constitute the exercise of editorial control and judgment. It has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees of a free press as they have evolved to this time.

Miami Herald Publishing Co. v. *Tornillo*, 418 U.S. 241, 258 (1974) (footnote omitted).

We submit that a far simpler test will both remove this burden and serve as better defamation law: If a published summary of public record documents reflects both sides of a binary dispute over historical fact, it is sufficiently accurate to be insulated from attack as a false statement.

Although the quality of the "facts" conveyed was very different, this Court held, in *Time, Incorporated* v. *Pape,* that precise fidelity to the language of a public document was not required to achieve protection from defamation liability to a public official. In this case, the "bristl[ing] . . . ambiguities"[4] that helped to excuse incomplete accuracy in Time's report on *Justice* are not present, because the public documents surveyed were of a different sort. But, the values underlying newspaper coverage of public records which informed the decision in *Pape* are emphatically present here. There is, for that reason, a need for this Court to establish clear standards for the determination of accuracy in the reportage of public records consisting of investigative reports.

II. The Louisiana Appellate Courts Declined to Conduct an Independent Evaluation of the Evidence Relied on by the Trial Court to Establish Actual Malice, in Disregard of Law Established by This Court.

The Louisiana Court of Appeal dismissed Capital City's objections to the trial court's finding of actual malice, on the basis of what it perceived to be appropriate deference to the fact finding function of the trial court:

> We conclude after examination of the evidence that the trial judge's findings of fact to which plaintiff objects in his first, second and fourth assignments of error are not manifestly erroneous and should not be disturbed on appeal. *Canter* v. *Koehring Co.,* 283 So.2d 716 (La. 1973) [footnote omitted].

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[4] *Time, Incorporated* v. *Pape,* 401 U.S. at 290.

Buratt v. *Capital City Press, Inc.*, 459 So.2d at 1270. App. 4a.[5] The "manifest error" standard of review is at at least as deferential to trial court fact-finding as the reading of Rule 52(a) of the Federal Rules of Civil Procedure rejected by this Court in *Bose Corp.* v. *Consumers Union of U.S., Inc.*, ____ U.S. ____, 104 S.Ct. 1949. As the *Bose* case recognized, rigorous appellate review of evidence relied upon to find actual malice is an integral part of the *New York Times* v. *Sullivan*, 376 U.S. 254 (1964), protection of First Amendment values. The disinclination of the Louisiana courts to extend such review is not constitutionally permissible.

The failure of the appellate courts to review closely the factual basis for the trial court's conclusion on the existence of malice was telling. The Court of Appeal endorsed this summary of facts and law on that question:

> [The trial judge] simply held that when other information was there and was in fact known by the reporters, they were not justified in omitting that information from the summary simply because it refuted the point they were trying to make. A reckless disregard for the truth or falsity of the material published follows from such action.

Buratt v. *Capital City Press, Inc.*, 459 So.2d at 1271. App. 6a. This is a generous construction of the less than cohesive trial court pronouncements, but for present analysis its shortcoming is in the uncritical adoption of a fact nowhere supported in the record. The "other informa-

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[5]The fourth assignment of error was:

> 4. The lower court erred in finding "actual malice" on the part of the defendant.

Buratt v. *Capital City Press, Inc.*, 459 So.2d at 1269. App. 3a.

tion" to which the passage set out above adverts must be the Stafford statement. As we showed above, all other public record versions of the underlying facts were accurately conveyed in the article.

Both of the "Gestures of Friendship" authors testified that they had not seen the Stafford statement in the research conducted to prepare the article. There was no direct testimony to the contrary. The trial judge took up the issue of the reporters' knowledge of the Stafford statement in two passages. He first observed:

> It is very interesting that on direct examination defendant's employees testified they did not see or remember Mr. Stafford's statement or Mr. Buratt's second statement but on cross examination when Mr. Roy Pritchford reviewed his notes, these notes contained information that could only have come from Mr. Stafford's statements and/or Mr. Burrat's second statement.

Buratt v. *Capital City Press, Inc.*, 459 So.2d at 1272. App. 10a. The testimony on cross examination makes it clear that it was the second Buratt statement, and not the Stafford statement, that Mr. Pritchford had seen.[6]

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[6]Mr. Pritchford was presented with notes that he had made in preparing the story and asked to read part of them into the record:

> Q. Just read from Mr. Buratt's
> A. Okay. Uh, okay. "Buratt stated" . . . well, I beg your pardon, it does say . . . it does say Earl Stafford. "he took Earl Stafford" . . . I missed this one . . . "to visit Barber Brothers Construction in that Stafford was in need of road construction work. . . ."
> Q. So, you did have knowledge of Earl Stafford
> A. I saw that . . . I obviously saw it . . . .

Tr. 120.

Four paragraphs later, in his discussion of proof of actual malice, the trial judge expanded his conclusion very considerably:

> Not only did defendant have plaintiff's denial but other statements were contained in the public records (and known to defendant as shown by the notes introduced into the record) that supported plaintiff's statements.

Buratt v. *Capital City Press, Inc.*, 459 So.2d at 1273. App. 11a. The only notes introduced were the Pritchford notes discussed above and, as we have explained, they show no knowledge of the Stafford statement. The only testimony on the topic — that from the reporters — denies knowledge of that statement.[7] Thus, whatever one might make of the legal proposition that knowledge of the Stafford statement coupled with the failure to make reference to it gives rise to a permissible inference of actual malice, the fact of knowledge was not proved, much less established with convincing clarity.

The failure of the Louisiana courts to review the trial court's fact-finding on the subject of actual malice with proper rigor hid this fundamental factual error from remedy. The standard of review required of federal courts in public official/public figure defamation cases — as

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[7]A third Capital City reporter, Lawrence Albarado, Jr., was uncertain about his review of the Stafford interview document:

> I can't say with any surety that I saw this particular statement [the Stafford interview summary]. I may have. I . . . I've read several of the different statements that this, you know, all of the files were done by the interviewee.

Tr. 144. Although Mr. Albarado did not participate in writing the article in question, arguments might have been made for the attribution of knowledge by Mr. Albarado to the two reporters who did write the "Gestures of Friendship" story. That case was not made.

recently articulated in the *Bose* decision – must be adhered to by state courts.

CONCLUSION

For the reasons set out above, petitioner Capital City Press, Inc. prays that a writ of certiorari issue to review the judgment of the Supreme Court of Louisiana.

Respectfully submitted,

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April 15, 1985

APPENDIX A

Gilbert BURATT
v.

CAPITAL CITY PRESS, INC.

No. 83 CA 1240.

Court of Appeal of Louisiana,
First Circuit.

Nov. 20, 1984.

Victor L. Marcello and James Marchand, Donaldsonville, for plaintiff-appellee.

Frank M. Coates, Jr., Baton Rouge, for defendant-appellant.

Before WATKINS, CRAIN and ALFORD, JJ.

CRAIN, Judge.

Defendant, Capital City Press, appeals the judgment of the trial court finding in favor of plaintiff, Gilbert Buratt, in a libel action arising out of the publication of a newspaper article by defendant.

FACTS

On July 8, 1979, Capital City Press, through its newspaper, *The Sunday Advocate,* published an article which concerned Gilbert Buratt, who had been a member of the Ascension Parish Police Jury for over 10 years and was then Parish Manager. That article was entitled, "Records Reveal Gifts to Police Jurors." It was prefaced with the words, " 'Gestures of Friendship' in Ascension." The article, in pertinent part, states as follows:

> Barber also said that his firm was asked to overlay road beds in a subdivision in Galvez owned by Police Juror and Parish Manager Buratt and a partner.
> Buratt said that he never developed any property in the area.
> Barber said that the company turned down the request since tests showed the road bed was "insufficient for overlay purposes." He said Buratt's unnamed partner later said that he would pay whatever price was necessary since he had been turned down a number of times. He said the work was eventually performed by someone else.

Plaintiff, Gilbert Buratt, subsequently filed suit against Capital City Press seeking to recover damages based on alleged defamation. Defendant filed an exception of no cause of action, which was maintained by the trial court. This court reversed in *Buratt v. Capital City Press,* 399 So.2d 687 (La.App. 1st Cir.1981), finding that a defamatory implication could be drawn from the words in question and further finding that the petition clearly alleged malice — one of the essential elements of a cause of action for defamation in this case.

Trial was held on January 11, 1983, and, for written reasons assigned, judgment was rendered in plaintiff's favor and against defendant in the sum $3000 in damages and $1000 in attorney's fees.

From that judgment, Capital City Press appeals, specifying the following as error:

1. The lower court erred in finding the reported fact in question defamatory.
2. The lower court erred in failing to find that the defense of truth applied in this case.

3. The lower court erred, as a matter of law, in holding that the newspaper must report the totality of public records on a subject in order to enjoy any privilege and that any summation of particular public records, even though accurate, subjects the newspaper to damages.
4. The lower court erred in finding "actual malice" on the part of the defendant.

LAW

On May 21, 1979, the Louisiana Supreme Court handed down a decision in the case of *Fryar v. Guste,* 371 So.2d 742 (La.1979). This case held that certain interviews from the Attorney General's office involving the Ascension Parish Police Jury were public records required to be disclosed by the Attorney General to members of the public, including newspaper reporters. A rehearing was denied on June 25, 1979. The plaintiff in that case, Milford Fryer (Mr. Fryer's name is incorrectly spelled in the Supreme Court case), was, in fact, a newspaper reporter and wished to view these interviews to see whether or not there was anything of public interest that ought to be published. Mr. Fryer and other reporters went to the Attorney General's office shortly after the opinion became final and went over the records. As a result of the inspection of these records, there appeared in *The Sunday Advocate* of July 8, 1979, four newspaper articles based on the records. All of these articles involve excerpts and summaries of material taken from those statements of the Attorney General's office declared to be public records by the Louisiana Supreme Court. The record is clear that the writers of these articles wrote the articles based on the contents of the public records alone. It is also clear that the articles were not based on all of the available public records, but only on those selected by the reporters.

Plaintiff objected to the statement in one article that he owned an interest in a subdivision where he asked Paul Barber to overlay the road beds. The trial court found that this statement was indeed untrue and when conected with the headlines of the article was defamatory. The trial court's well-reasoned opinion, utilizing the standards for a defamation action set out by this court in *Buratt,* supra, is attached to this opinion with our approval.

We conclude after examination of the evidence that the trial judge's findings of fact to which plaintiff objects in his first,[1] second and fourth assignments of error are not manifestly erroneous and should not be disturbed on appeal. *Canter v. Koehring Co.,* 283 So.2d 716 (La.1973). We also find defendant's third assignment of error without merit and adopt the trial judge's written reasons for judgment as our own. We would additionally point out with reference to this assignment of error that the assignment alleges error in a holding of the trial court which we do not find was the trial court's holding. The assignment states

---

[1]We would note that appellant's reasoning that the material should not be considered defamatory derives from its theory that the statements that plaintiff, as a police juror and parish manager attempted to get a contractor who did business with the parish to overlay a subdivision owned by the juror, admittedly untrue, should not be read in conjunction with the headline under which it appeared. That headline was set up as follows:

"GESTURES OF FRIENDSHIP IN ASCENSION RECORDS REVEAL GIFTS TO POLICE JURY MEMBERS"

We consider this argument without merit. If the material under a headline is not relevant to that headline it shouldn't appear there. Actually, the conclusion is inescapable that the headline is purposely being used to create an inference of wrongdoing from what would otherwise be very weak material. The inference created, as we stated in our original opinion, is that Buratt was guilty of ". . . at least, an unethical use of his public position, and the possible commission of a crime by him."*Buratt,* 399 So.2d at 689. This is defamatory.

that the trial court holds that public records must be reported in their entirety and cannot be summarized even if the summary is accurate. That is not what the trial judge held and that is not what defendant's employees did. The trial judge held that if public records are going to be summarized, the summarization should be based on the entirety of the records available. The summary in this case was not. The summary did not include a summarization of other available records which completely refuted the thesis of the article. The disregard of the other available statements which could also have been summarized without further research or investigation, and which would have changed the whole tenor of the disputed statement in the article with reference to Buratt is what makes this a violation of the *New York Times* actual malice rule. It is illustrated by the following: The article summarized a statement given the Attorney General by Paul Barber. In the article Barber was summarized as referring to ". . . a subdivision in Galvez owned by Police Juror and Parish Manager Buratt and a partner" and "Buratt's unnamed partner . . .". The unnamed partner was Earl Stafford. His statement was also there with the documents of the Attorney General that had been declared public, and was in fact examined by the same reporters who summarized Barber's statement. It completely refuted ownership of the subdivision by Buratt. Yet it was not summarized or referred to by the reporters.

This is what the trial judge meant by summarizing all available material.[2] The trial judge did not require in-

[2]This fact distinguishes this case from those cited by appellant. In *Wilson v. Capital City Press*, 315 So.2d 393 (La.App. 1st Cir.1975), writ denied, 320 So.2d 203 (La.1975), the material printed came from the only public record available which turned out to be erroneous. The same is true *Francois* v. *Capital City Press*, 166 So.2d 84 (La.App.

(Footnote continued.)

vestigation, or verification or verbatim reproduction. He simply held that when other information was there and was in fact known by the reporters, they were not justified in omitting that information from the summary simply because it refuted the point they were trying to make. A reckless disregard for the truth or falsity of the material published follows from such action. *New York Times v. Sullivan,* 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964).

Appellee's request for additional attorney's fees on appeal may not be considered by this court, as plaintiff did not appeal or answer the appeal. La.C.C.P. art. 2133, *Celestin v. Fireman's Fund Insurance Company,* 430 So.2d 1263 (La. App. 1st Cir. 1983).

For the foregoing reasons, the judgment of the trial court is affirmed. Appellant is to pay all costs.

AFFIRMED.

3rd Cir.1964). Conceding also the limited privilege to publish public records is applicable here with reference to the statement summarized, this privilege is conditioned on there being no malice. *Francois,* 166 So.2d at 88. The trial court correctly applied the *New York Times* rule of actual malice to this case, Buratt obviously being a public figure. A finding that there is actual malice under the *New York Times* rule also removes the statement from the limited privilege status accorded by Louisiana law.

APPENDIX

STATE OF LOUISIANA
PARISH OF ASCENSION
23RD JUDICIAL DISTRICT COURT
GILBERT BURATT
VERSUS NO. 26,374
CAPITOL CITY PRESS, INC.

Filed: April 4, 1983

REASONS FOR JUDGMENT

Plaintiff has filed suit to recover damages based upon an alleged defamatory newspaper article published by the defendant.

I.

The first issue this Court must decide is whether the words published by defendant could, in fact, be construed as defamatory.

This Court is in complete agreement with the jurisprudence cited and the decision of the First Circuit Court of Appeals (who stated in their prior decision of this matter when deciding on an exception of no cause of action):

> "Appellee contends that the words contained in the body of the news article are not in themselves defamatory. This may be true. However, appellant has alleged in his petition that the headline or title of the article and a preface connect the idea of 'gestures of friendship' and 'gifts to police jury members' with the statements in the body of the article concerning appellant, and that the overall implication of these statements is defamatory. We agree."

> "The statements naturally imply conduct by appellant, which is, at least, an unethical use of his public position, and the possible commission of a crime by him. When taken in their entirety, these words, together with the reasonable inferences to be drawn from them, would tend at the least to deprive appellant, a public official, of the benefit of public confidence and injure him in his occupation."

II.

The second issue this Court must decide is whether the words published by defendant, if defamatory, were in fact truthful.

The evidence presented at the trial of this matter established clearly and without doubt or even contradition that plaintiff DID NOT in fact have any interest in a subdivision in Galvez or any subdivision anywhere else.

III.

Defendant further alleges as a defense that the article is an accurate report of what is contained in the public records.

This Court is well aware of the provisions of Article 12, Section 3 of the Louisiana Constitution of 1974, and the cases of *Bartels v. Roussell,* 303 So.2d 833; *Francois v. Capital City Press,* 166 So.2d 84; *Wilson v. Capital City Press,* 315 So.2d 393 and other cases cited by defendant. This Court is not in disagreement with any of the principles set out therein. It is clear that a newspaper does have the right to publish material taken from public records.

The Judge was instructed, some time ago, that it was a basic principle of law that for every right received there was also an attendant obligation. This Court is of the

opinion that this is still a valid principle of law and applicable to this case. The evidence herein clearly showed that defendant did use as a source for its article information gathered from the public records; however, the evidence also shows the article did not contain matter quoted verbatim from the public records and so identified but only a summarization of what defendant felt the public records reflected.

It is the opinion of this Court that the right to inspect and use public records has an attendent obligation that any use of said public records must accurately and fairly represent what is contained in the entirety of said public records. It is the considered opinion of this Court that any other holding would be unconscionable.

The evidence presented herein established that although the article itself was written by Milfred Fryer and Roy Pritchford, the inspection of the public records was only partially done by them. The evidence established that Mr. Fryer, Lawrence Albarado and Roy Pritchford (all employees of defendant) divided the documents among themselves and each reviewed only a portion thereof. The article written was based on their separate notes of what each felt was pertinent of that portion they reviewed and copies of some statements they felt important. The evidence is clear that all three of defendant's employees were afforded complete access to the records in question, no time limit for their inspection was given and they were allowed to make copies of whatever they wished.

It is the opinion of this Court that the article does not accurately reflect what is contained in the entirety of these public records. The basic thrust of the article is that a police juror owned a portion of a subdivision and asked as a favor that the roads therein be overlaid. While defendant

did print a denial of Mr. Buratt, it did not report that another statement of Mr. Buratt and one given by Earl Stafford (who was named by Mr. Buratt as the owner of the subdivision in his statement copies of which defendants had in their possession) were in those records and that the statement of Mr. Stafford completely supported the statements of plaintiff. It is very interesting that on direct examination defendant's employees testified they did not see or remember Mr. Stafford's statement or Mr. Buratt's second statement but on cross examination when Mr. Roy Pritchford reviewed his notes, these notes contained information that could only have come from Mr. Stafford's statements and/or Mr. Buratt's second statement.

It is the opinion of this Court that the evidence presented establishes that a fair and accurate report of the public records would change the article from Gilbert Buratt attempting to extort favors or "gifts" from a parish contractor (criminal activity) to Gilbert Buratt introducing a constituent to a possible business associate, a completely innocuous activity.

IV.

The next issue is that of whether there existed actual malice on the part of defendant so as to allow plaintiff, a public official, to recover damages for a defamatory statement.

In its prior decision on this matter the First Circuit Court of Appeals again cited the law applicable herein:

> "As to the legal issue of malice, our Supreme Court, in *Kidder v. Anderson,* 354 So.2d 1306 (La.1978), stated:

> 'A public official may not recover damages for a defamatory statement, even if false, relating to his official conduct "unless he proves that the statement was made with 'actual malice' – that is, with knowledge that it was false or with reckless disregard or whether it was false or not." *New York Times Company v. Sullivan,* 376 U.S. 254, 279-80, 84 S.Ct. 710, 726, 11 L.Ed.2d 686 (1964).' "

The evidence presented in this case showed clearly that defendant had knowledge that statements contained in its article might be false. Not only did defendant have plaintiff's denial but other statements were contained in the public records (and known to defendant as shown by the notes introduced into the record) that supported plaintiff's statements. It is very interesting that Mr. Roy Pritchford, defendant's employee who wrote the portion of the article in question, testified that if he had all the statements before him when he wrote the article (statements that his own notes on cross examination show he had reviewed personally) he would have consulted legal counsel before printing the article.

Despite knowledge as reflected by their notes themselves, that certain statements contained in the article might be false all three of defendant's employees testified that they did not make ANY EFFORT WHATSOEVER to determine which of the conflicting statements they reviewed might be true. Not one single person was interviewed, no back up work was done whatsoever, and despite fact that one of the employees testified he had consulted the conveyance records on previous occasions to determine whether plaintiff owned a subdivision, no new effort was made or prior notes reviewed.

The evidence herein established that defendant through

its employees wrote an article based on certain statements contrary to plaintiff's interest and in writing said article simply chose to ignore statements that refuted the statements they were relying upon. An article if based on public records must be reflective of what is contained in the entirety of said public records, not merely that portion which supports one position. To publish an article based on a portion of some public records that supports only one position when those public records themselves also contain other evidence that shows the portion relied upon might be false, without any independent investigation into which portion might be correct, is clearly to publish "with reckless disregard of whether it is false or not" (actual malice).

V.

The issue of damages is all that remains. In a case of this nature the matter of damages is very difficult. The Court is convinced that plaintiff has suffered embarrassment as a result of this article as the newspaper of defendant is distributed widely in the area of plaintiff's residence, however, plaintiff has been re-elected to office and the evidence presented has not proven to this Court's satisfaction whether a decrease in the margin of victory was due to this article, the opponent or other political considerations. Accordingly, plaintiff will be awarded Three Thousand and No/100 ($3,000.00) Dollars as damages and attorney's fees of One Thousand and No/100 ($1,000.00) Dollars under Article 2315.1 of the Lousiaina Civil Code and defendant also will be assessed all costs of court.

APPENDIX B

THE SUPREME COURT
OF THE STATE OF LOUISIANA

GILBERT BURATT

VS. NO. 84-C - 2147

CAPITAL CITY PRESS

IN RE: Capitol City Press Inc., Applying for Writ of Certiorari and/or Review; to the Court of Appeal, First Circuit, Number 83-CA-1240; Parish of Ascension 23rd Judicial District Court Div. "C" Number 26,374

January 14, 1985

Denied.

HTL
JAD
WFM
FAB

CALOGERO, DENNIS & WATSON, J.J., would grant the writ.

Supreme Court of Louisiana
January 14, 1985

/s/
Clerk of Court
For the Court

NO. 84-1625

Office - Supreme Court, U.S.
FILED
JUL 2 1985
ALEXANDER L. STEVAS
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1984

CAPITAL CITY PRESS, INC.,
Petitioner,

v.

GILBERT BURATT,
Respondent.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

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IN THE
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OCTOBER, 1984

NO.

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v.

GILBERT BURATT,
Respondent

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

MAY IT PLEASE THE COURT:

Respondent, Gilbert Buratt, adopts by reference the following from the petition for a writ of certiorari to the Supreme Court of Louisiana filed by Capital

City Press, Inc.:

A. Questions presented (1);

B. Opinions below (1);

C. Jurisdiction (1);

D. Constitutional Provisions Involved (2);

E. Statement of the Case (2)

LAW AND ARGUMENT

I.

PETITIONER CLAIMS THAT A REPORT OF PUBLIC RECORD INFORMATION THAT ADEQUATELY CAPTURES ALL SIDES OF ANY DISPUTE CONCERNING HISTORICAL FACT IS "ACCURATE" AND CONSTITUTIONALLY SECURE FROM CLAIMS OF DEFAMATION LIABILITY BY A PUBLIC OFFICIAL PLAINTIFF.

Petitioner claims that the information reported in the Sunday Advocate on July 8, 1979, was "the only evidence available to illuminate an investigation into charges that public officials had comported themselves with less than appropriate rectitude in their official capacities." Petitioner

further states that "to make generally known, the raw reports of such investigation is surely a centrally important function" of the press.

The trial court, and higher courts of Louisiana recognized that the information reported in the article was not the only evidence within the knowledge of the defendant which would have clarified the factual basis of the charges in the investigation of Gilbert Buratt. Respondent must agree that the intent of that news article was to illuminate an investigation into charges that public officials had comported themselves with less than appropriate rectitude in their official capacities. However, the courts below found that the petitioner failed to faithfully, justly, and completely report other evidence which would have defeated the obvious intent of the article. Unlike Time, Incorporated v. Pape, 401 U.S. 279 (1971) and Time, Inc. v. Firestone, 424 U.S. 448 (1976), the pub-

lisher here was not reporting the conclusions of a governmental entity. Rather, it was sketching its own skewed picture of a public official's actions and the conclusions it wanted its readers to reach. The publisher was in total control of the "raw data" sought to be disseminated to the public. By petitioner's control of this data, it cannot abrogate its responsibility to the issue of "truth" in publication. This responsibility includes the necessity to print all facts which fairly and completely illuminate those charges, even though they may be contrary to a preconceived thesis.

Respondent fully agrees with the petitioner's statement that "public knowledge of official reports of investigations of public officials - and, most especially, elected officials - are a vital ingredient to the informed function of the democratic process". This democratic process does not apply only to the protection of free

speech, but applies also to the protection of the privacy and reputation of public officials, and most importantly, to the right of the public to know all of the facts and the complete truth about their public officials. As a result of its ubiquitous control of public access to information, the press effectively deprives the voting public of its right to free and informed elections by failing to accurately and fairly report information about public officials. That "vital ingredient" spoken of by the petitioner is important not only to the public official but also to the voting public.

The petitioner alleges that it was fulfilling a public interest in being fully informed, when in fact it only printed that evidence which incriminated the respondent and ignored exculpatory statements which were within its knowledge. Even after it was brought to petitioner's attention that

its article was false and that Gilbert Buratt did not own, or have any interest in, a subdivision, the Morning Advocate failed to publish a correction. Petitioner in its news article stated that Paul Barber reported to an investigator that Mr. Buratt was a partner in a subdivision development and that he and an unknown partner had asked Mr. Barber to overlay a road in a subdivision owned by Buratt. (Barber was a contractor who was doing work for the Parish Police Jury, and Buratt was a police juror at that time.) Further, the article stated that Mr. Buratt denied having any interest in the development.

It was clearly shown at trial that the public documents reviewed by the authors of this article contained a second Gilbert Buratt interview, and an interview with Earl Stafford, the "unknown partner". These interviews contained information

inapposite to the premise upon which the article was based, namely that Gilbert Buratt is a police juror who was attempting to extort or receive a "gift" from a parish contractor.

The authors admitted at trial that they not only had serious doubts as to the truth of the publication, but were aware of and in possession of facts which demonstrated that the publications were false. Milfred Fryer, one of the authors, on cross examination, stated that he was given access to the complete file of the Attorney General's Office and given as long as he wanted to examine it. He also stated that at the time of the article, he was aware that Earl Stafford owned the subdivision at issue, and knew that Earl Stafford was the "unknown partner" referred to in this article, and yet did not include that information in the article. [1]

1. Mr. Fryer testified:
Q. At the time you printed these
(Footnote continued)

The interview with Earl Stafford, and the second interview with Gilbert Buratt, both showed that the owner of the subdivision was Earl Stafford and explained why Gilbert Buratt had spoken to Paul Barber. As the trial court found, this information completely refuted ownership of the subdivision by Buratt, but was not summarized or referred to by the reporters, even though it was within their knowledge. Buratt v. Capital City Press, Inc., 459 So.2d., at 1270 (Petitioners App.

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articles and after you had read the interviews, you knew who the unknown partner was, didn't you?

A. Well yes sir.

Q. Yet you didn't print that it was an unknown partner, and that you didn't print the circumstances completely surrounding this incident, is that correct?

A. That is correct.

Q. Right, but Mr. Buratt testified at one of his interviews that he had taken Earl Stafford to introduce him to Paul Barber concerning road construction but Paul Barber and them were working. Isn't that correct?

A. Yes sir.

(Footnote continued)

5a.) Petitioner claims an absence of malice because the portrayal of Mr. Buratt's ownership can have no more than two sides: either he owns it or he doesn't. The Morning Advocate incredibly claims to have fairly portrayed the Buratt "side" by simply printing his denial. However, the truth is that Buratt never developed or owned a subdivision, and the existence of the second side of the issue is merely an artifact of the newspaper's reckless disregard of the truth.

The courts below unanimously concluded that the withholding and refusal to

---

Q. And you had read that?
A. Yes Sir.
Q. So in fact you didn't print all of the pertinent facts of these interviews. Is that correct?
A. It depends on what you consider pertinent facts.
Q. Well you didn't print other portions of the interview which refer to the circumstances surrounding the statement made by Mr. Barber.
A. Well, we did as I recall, we generally print a general denial from Mr. Buratt.

include the second statement by Gilbert Buratt and the statement of Earl Stafford are the basis of "malice". To conclude otherwise would allow a publisher to manipulate the truth by its selective deletion of facts within it knowledge to support the premise of its article or headline, regardless of truth.

II.

PETITIONER ALLEGES THAT THE LOUISIANA APPELLATE COURT DECLINED TO CONDUCT AN INDEPENDENT EVALUATION OF THE EVIDENCE RELIED ON BY THE TRIAL COURT TO ESTABLISH ACTUAL MALICE, IN DISREGARD OF LAW ESTABLISHED BY THIS COURT.

The opinion of the Court of Appeals in the First Circuit, Louisiana, stated:

> "We conclude after examination of the evidence that the trial judge's findings of fact to which plaintiff objects in his first, second and fourth assignments of error are not manifestly erroneous and should not be disturbed on appeal." Canter v. Koehring Co., 283 So.2d 716 (La. 1973)

Immediately prior to this statement, the Court of Appeal noted:

> "The trial courts well reasoned opinion, utilizing the standards for a defamation action set out by this court in Buratt, supra, is attached to this opinion with our approval."

The Appeals Court, by attaching the opinion of the trial court, obviously reviewed each and every finding of the trial court and by attaching its opinion adopted

that reasoning as it's own. Additionally the court had reviewed the issue of malice on a prior occasion in Buratt v. Capital City Press, Inc., 399 So.2d 687 (1981).

More importantly, however, the Court of Appeals addressed the issue of actual malice in its opinion during its discussion of assignment of error number three.

> This is what the trial judge meant by summarizing all available material. The trial judge did not require investigation, or verification or reproduction. He simply held that when other information was there and was in fact known by the reporters, they were not justified in omitting that information from the summary simply because it refuted the point they were trying to make. A reckless disregard for the truth or falsity of the material published follows from such action. New York Times v. Sullivan, 84 S.Ct. 710 (1964) See Buratt, supra.

Petitioner also attempts to attack the trial court's determination that the authors of the article had information other than that which they reported on July 8, 1979. The court's holding was based partially upon the elusive testimony

by Mr. Pritchford. Mr. Pritchford testified on direct that he did not see any other statement concerning a denial or clarification of Mr. Buratt's interest in the alleged subdivision. However, when Mr. Pritchford was presented with his notes, which showed that he had seen other statements and made notations, he was forced to admit that he had seen this other information.

In addition, the testimony of Mr. Milfred Fryer shows that he was aware of the identity of the "unknown partner" referred to by Mr. Barber. He testified that although he knew the identity of the unknown partner at the time he wrote these articles, he did not reveal his identity and he did not report completely the circumstances surrounding the subdivision incident. Earl Stafford's interview was also in the record of the Attorney General's Office which was reviewed by the defendant.

Yet Earl Stafford's interview was not mentioned in subject article.

The trial court determination involved the credibility of defendant's witnesses. The First Circuit Court of Appeal, after reviewing the record, held that if reporters know or should know certain facts derived from the public record, they cannot omit these facts from their report simply because they are contrary to some preconceived theory or premise. The Court of Appeal, after reviewing the evidence, found that the second statement by Gilbert Buratt and the statement by Earl Stafford were known or should have been known by the defendants, who did not summarize or refer to them.

Petitioner's contention that the Louisiana Court of Appeals failed to review the factual findings of the trial court with proper rigor is unfounded. The Court of Appeal's opinion took into consideration

Mr. Fryer's admission that he was aware of the fact that Earl Stafford was the unknown unnamed partner in Paul Barber's statement. Further, it took into consideration that Roy Pritchford was aware that Earl Stafford was the unknown partner and further that Gilbert Buratt had testified that Earl Stafford was an unknown partner. None of this was reported in the article.

Importantly, Mr. Lawrence Albarado's testimony as to whether he did or did not see the article was as follows:

> "I remember either in discussion with...the other two reporters about reading it somewhere that the thought he...had no interest, you know, that this thought conveys here.
>
> * * *
>
> I can't say with [illegible]cty that I saw this particular statement. I may have...I read several of the different statements that this, you know, all of the files were done by the interviewee."

It is clear that the Court of Appeal did not accept defendant's testimony as credible. The Court of Appeals as well as the trial court concluded that the three reporters knew Earl Stafford was the unnamed partner, were aware of Earl Stafford's statement, and refused to print it. Those courts also found that the failure to print it constituted "actual malice".

CONCLUSION

It is for the reasons cited above that the trial court awarded Gilbert Buratt the sum of THREE THOUSAND AND NO/100 ($3,000.00) DOLLARS as damages in this suit. It is submitted that this Judgment should not be disturbed and that the petition for writ of certiorari be denied.

Respectfully submitted,

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CERTIFICATE

I HEREBY CERTIFY that a copy of the foregoing Brief in Response to Petition for a Writ of Certiorari to the Supreme Court of Louisiana has this day been mailed, postage prepaid, to counsel of record.

Donaldsonville, Louisiana, this 1st day of July, 1985.

VICTOR L. MARCELLO